

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 4/10/02 Item. 3.e.

File Number
CPA 95-02-051

Application Type
Conditional Use Permit Amendment

Council District
4

Planning Area
Berryessa

Assessor's Parcel Number(s)
254-29-017

PROJECT DESCRIPTION

Completed by: Jenny Nusbaum

Location: southeast corner of Berryessa Road and Interstate 680 Freeway (2470 Berryessa Road)

Gross Acreage: 0.8

Net Acreage: 0.8

Net Density: n/a

Existing Zoning: CP-Commercial Pedestrian

Existing Use: Monopole 35 feet in height with wireless communication antennae

Proposed Zoning: No Change

Proposed Use: No Change

GENERAL PLAN

Completed by: Jenny Nusbaum

Land Use/Transportation Diagram Designation
General Commercial/Capitol Avenue & Expressway Transit Corridor

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Jenny Nusbaum

North: Commercial

CP-Commercial Pedestrian

East: Commercial and Residential

CP-Commercial Pedestrian, A-Agricultural and A (PD) Planned Development

South: Residential

A-Agricultural and A (PD) Planned Development

West: Interstate 680 Freeway

n/a

ENVIRONMENTAL STATUS

Completed by: Jenny Nusbaum

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Jenny Nusbaum

Annexation Title: Berryessa No. 1-A

Date: 10-20-70

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions

Date:

Approved by: _____
☐ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Christopher Viray
1100 Zamora Court
Milpitas, CA 95035-3427

Clarence Chavis
Crown Castle International
6620 Owens Drive
Pleasanton, CA 94588

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jenny Nusbaum

Department of Public Works

None.

Other Departments and Agencies

See attached memorandum from the Fire Department.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The developer, Crown Castle International, is requesting approval of a Conditional Use Permit Amendment (CPA) to renew a permit originally approved by the Planning Commission on December 5, 1995 (File No. CP 95-08-051) to allow a 35-foot-high monopole with wireless communication antennae on an approximately 0.8 gross-acre site in the CP-Commercial Pedestrian Zoning District. A Conditional Use Permit is required for a wireless communication antenna located in the CP-Commercial Pedestrian Zoning District.

Currently, the existing project is permitted under a Conditional Use Permit Amendment approved by the Planning Commission on April 14, 1999 (File No. CPA 95-01-051). Under that amendment, seven 4-foot-high antennae spanning 11 feet in width were replaced with three 8-foot-high panel antennae mounted almost flush on the existing monopole. The amendment approved in 1999 extended the time limit of the original Conditional Use Permit by three (3) years.

The wireless facility is located at the rear of a one-story medical office building on Berryessa Road. The monopole, painted light blue-grey, is enclosed by an 8-foot-high chain link fence. Crown Castle International leases floor area inside the office building to house the equipment associated with the wireless communication antennae.

Located at the southeast corner of Berryessa Road and Interstate 680 Freeway, the subject site borders commercial uses to the north and east, a residential townhouse development to the south, and Interstate 680 Freeway to the west.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennae posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennae were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennae. Further, staff investigated

reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennae.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of General Commercial/Capitol Avenue & Expressway Transit Corridor in that wireless communication antennae are allowed in commercial designations. The 35-foot-high monopole is within the General Plan height limit of 50 feet.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). The project consists of the continued operation of an existing facility with no expansion of use.

ANALYSIS

The main project issue is conformance with the City Council Land Use Policy for Wireless Communication Facilities (Council Policy 6-20).

Conformance to City Council Policy on Wireless Communication Facilities

The *City Council Land Use Policy for Wireless Communication Facilities* (see attachment) specifies that all monopoles should be time-conditioned to allow periodic evaluation to assess any changes in technology that may allow reduction in the height of the pole or otherwise reduce its impacts. The project, as proposed, extends for two years the use of three 8-foot-high panel antennae mounted on the existing monopole.

The current Conditional Use Permit Amendment for this monopole, CPA 95-01-051, requires a technology assessment prior to renewal or extension of the time condition for this use. This assessment requires the applicant to submit an analysis of any changes in technology that would eliminate the need for this facility, reduce its height or otherwise achieve the objectives of the Council Policy on Wireless Communication Facilities. The applicant has stated that the need for this facility at this height still exists; however, the applicant has not shown why the existing monopole can not be replaced with a slimmer profile monopole.

Rather than replace the existing monopole with a new slimmer-profile monopole of equal or lesser height, under a five-year time-limited Conditional Use Permit, the applicant has instead proposed to maintain the existing monopole under a **two**-year time limit with the proposed Conditional Use Permit Amendment.

To reduce the existing monopole's aesthetic impacts, staff recommends including a condition in the proposed Permit Amendment that requires the applicant to replace the existing chainlink fence surrounding the existing monopole with either a vinyl clad chainlink or vines in the fence, designed and constructed to the satisfaction of the Director of Planning. With this condition and the two-year time limit, staff concludes that the project will be in conformance with Council Policy 6-20.

PUBLIC OUTREACH

A public hearing notice was mailed to the owners and tenants within 500 feet of the subject site, and staff has been available to respond to any questions regarding the project.

RECOMMENDATION

1. The project site has a designation of General Commercial/Capitol Avenue & Expressway Transit Corridor on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CP-Commercial Pedestrian Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The applicant proposes to renew a previously approved Conditional Use Permit (File No. CP 95-08-051) to allow a monopole 35 feet in height with wireless antennae on an approximately 0.8 gross-acre site.
5. The site borders commercial uses to the north and east, a residential townhouse development to the south, and Interstate 680 Freeway to the west.
6. The 35-foot height of the existing monopole does not exceed the maximum height provided for such facilities under the Zoning Ordinance and under the General Plan (50 feet).
7. The project is subject to the City Council Policy on Wireless Communication Facilities.

The Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Diagram designation of the City of San Jose.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
4. The proposed project conforms to the applicable criteria of the City Council Policy on Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to the public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit Amendment to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this Permit Amendment except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit Amendment shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

2. **Plan Revisions.** Within 30 days of the issuance of this Permit and prior to recordation, the Applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 30 days shall cause this permit to automatically expire.
 - a. **Site Plan.** Applicant shall submit a site plan, showing a vinyl clad chainlink fence that replaces the existing chainlink fence surrounding the existing monopole, or planting fast growing vines on the existing chainlink fence to the satisfaction of the Director of Planning.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Highway 680/Hostetter Cell Site, Antenna Modification, 2470 Berryessa Road, San Jose, CA 95133" dated March 23, 1999, last revised March 24, 1999, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Street Cleaning.** During construction, the developer shall sweep and wash down the public streets each working day. In any on-site area visible to the public from the public right-of-way, the site shall be clean of debris, rubbish, and trash at least once a week.
5. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
6. **Requirements of Prior Permit.** All conditions of the prior permits (File No. CP 90-06-036, CP 95-08-051, CPA 95-01-051), except as modified by this permit amendment, still remain in effect.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Amendment, if within such two-year period, the proposed use of this site or the construction of buildings, has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit Amendment. The date of adoption is the date the Resolution granting this Conditional Use Permit Amendment was approved by the Planning Commission.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit Amendment expires and has no further force or effect **two** (2) years from the date of this Permit. At that time, that applicant/owner shall provide information to the City to determine if the monopole is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

Please note that this Conditional Use Permit Amendment has been granted for a period of **two** year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180- calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

Attachments

- c: Christopher Viray, 1100 Zamora Court, Milpitas, CA 95035-3427
Clarence Chavis, Crown Castle International, 6620 Owens Drive, Pleasanton, CA 94588